

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN OHIO DISTRICT  
EASTERN DIVISION**

**DEBORAH GUERRERO,**

**Plaintiff,**

**v.**

**COMMISSIONER OF  
SOCIAL SECURITY,**

**Defendant.**

**Case No. 2:19-cv-1426**

**JUDGE EDMUND A. SARGUS, JR.**

**Magistrate Judge Kimberly A. Jolson**

**OPINION AND ORDER**

On December 31, 2019, the Magistrate Judge issued a Report and Recommendation **OVERRULING** the Plaintiff Deborah Guerrero's Statement of Errors to the decision of the Commissioner of Social Security which denied to her disability benefits. (R. 12.) Plaintiff has timely objected to the Report and Recommendation. (R. 13.) For the reasons that follow, the objections are **OVERRULED** and the Report and Recommendation is **ADOPTED** as the **ORDER** of this Court.

**I.**

The Plaintiff raises a single objection. She contends that her case should be remanded to the Commissioner for consideration of new medical records and findings which she submitted to the Appeals Council, following an adverse decision from the Administrative Law Judge on December 13, 2018. The records she submitted were received by the Social Security Administration on December 26, 2018 and contained documented findings, complaints and medical observations as recently as January 9, 2019. All of the records submitted were compiled between August 3, 2019 and January 9, 2019. The hearing before the Administrative Law Judge occurred on November 30, 2019.

The Appeals Council refused to “exhibit” the newly submitted medical records, which this Court interprets to mean the records were not considered. (R. 8-2, p. 3.) The Appeals Council refused to consider medical evidence compiled on January 9, 2019, twenty-seven days after the Administrative Law Judge’s decision, claiming the evidence “does not relate to the period at issue”. (*Id.*)

As a procedural matter, the Court disagrees with the position of the Appeals Council. The better course would have been to consider the evidence, at least the portion that was compiled after the hearing. Almost all medical conditions are dynamic, oftentimes progressively debilitating. A fact finder should consider the most recent evidence and if necessary reassess the case. Further, medical evidence derived on January 9, 2019, could most certainly be evidence of the plaintiffs condition on December 13, 2019 or earlier.

The undersigned has reviewed and considered the evidence in question to determine whether a remand is required. Notwithstanding the concerns herein expressed, this Court agrees with the Magistrate Judge that the new evidence does not produce a reasonable probability that the decision of the Administrative Law Judge would be different. In other words, the records would not change the outcome.

## II.

Based upon the foregoing, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge. The decision of the Commissioner was lawful and supported by substantial evidence. The denial of benefits is **AFFIRMED** and this case is **DISMISSED**.

**IT IS SO ORDERED.**

9-28-2020  
Date

s/ Edmund A. Sargus, Jr.  
**EDMUND A. SARGUS, JR., JUDGE**  
**UNITED STATES DISTRICT COURT**